

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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CHIEF CLERK'S OFFICE

Commonwealth Edison Company)
)
Petition for Approval of a Revised)
Decommissioning Expense Adjustment)
Rider)

Docket No. 00-0361

INITIAL BRIEF OF THE
ENVIRONMENTAL LAW & POLICY CENTER

The Environmental Law & Policy Center ("ELPC"), by counsel, submits this initial brief in the above-captioned proceeding.

OVERVIEW

If the transfer of Commonwealth Edison's ("Edison") nuclear plants to Exelon's non-regulated Genco ("Genco") is completed, Illinois consumers cannot and should not be required to contribute any additional funds to decommission the nuclear plants because Illinois consumers cannot be charged expenses for non-jurisdictional assets. Edison has no legal right to collect decommissioning funds once it transfers the plants to Genco. Further, even if Edison did have the legal right to collect decommissioning funds for Genco, Illinois consumers should not be required to subsidize the future operation of those plants. If the transfer of the nuclear plants to Genco is completed, Genco and its nuclear operations should be required to compete on a level economic playing field with other electricity generators. Other generators will not be able to force Illinois consumers to subsidize their expenses and neither should Genco. In short,

decommissioning expenses are a cost component for operating the merchant nuclear plants and should be reflected in the price of the power that is offered for sale in the competitive electricity services market.

Edison should be required to provide assurances that both radiological and non-radiological decommissioning will be completed at all of its nuclear plants. ELPC is particularly concerned about the non-radiological decommissioning. While Edison conclusively demonstrated conclusively in this proceeding that non-radiological decommissioning is necessary, it is not required by the Nuclear Regulatory Commission.

Other than on the issue of non-radiological decommissioning/site restoration, ELPC generally supports the positions of the People of the State of Illinois, People of Cook County, City of Chicago, Citizens Utility Board, Chicago Area Industrial & Health Care Customers Coalition and Illinois Industrial Energy Consumers.

I. ILLINOIS LAW DOES NOT PERMIT EDISON TO COLLECT DECOMMISSIONING CHARGES ON BEHALF OF EXELON GENCO

Edison relies upon Section 16-114 of the Public Utilities Act ("Act") as the authority for the Illinois Commerce Commission ("Commission") to authorize Edison to collect decommissioning funds based upon a contractual relationship with Genco. *See* 220 ILCS 5/16-114. However, the plain language of Section 16-114 does not support Edison's argument. Section 114 provides, in pertinent part, that:

On or before April 1, 1999, each electric utility owning an interest in, or having responsibility as a matter of contract or statute for decommissioning costs as defined in Section 8-508.1 of, one or more nuclear power plants shall file with the Commission a tariff or tariffs conforming to the provisions of Section 9-201.5 of this Act, to be applicable to each and every kilowatt-hour of electricity sold at retail in the electric utility's service area ...

The Commission shall determine whether the tariff meets the requirements of Sections 9-201 and 9-201.5 and of this Section, and shall permit the electric utility's tariff together with any modifications made after hearing to become effective no later than October 1, 1999....

The reference to "responsibility as a matter of contract" does not somehow provide authority to the Commission to authorize Edison to collect decommissioning funds for Genco. In fact, Section 114 does nothing more than require utilities owning an interest in nuclear plants, and those with "responsibility as a matter of contract" for decommissioning costs" to unbundle decommissioning costs from rates and instead collect them through a separate rider. Section 114 requires a filing before April 1, 1999, and the new riders to be effective no later than October 1, 1999. Section 114 has no applicability to the sale of nuclear utilities occurring a year later in the year 2000.

The bottom line is that Northern Illinois jurisdictional ratepayers cannot be charged for non-jurisdictional plants and their expenses. For years, this Commission has, for example, excluded Edison's and other utilities' non-jurisdictional assets from the rate base in setting rates. That legal rule applies with like force here.

In addition, even if the Commission could authorize Edison to collect decommissioning funds for Genco, it would be poor public policy to do so. If the transfer of the nuclear plants to Genco occurs, ratepayers should not be required to subsidize nuclear power and to give it an unfair advantage over other sources of power. Coal and gas plants are not provided with hundreds of millions of dollars of ratepayer subsidies. Nuclear power should be required to compete on a level playing field.

II. EDISON SHOULD BE REQUIRED TO PROVIDE ASSURANCES THAT BOTH RADIOLOGICAL AND NON-RADIOLOGICAL DECOMMISSIONING WILL BE COMPLETED AT ALL OF ITS NUCLEAR PLANTS

Edison made a compelling case in this proceeding that non-radiological decommissioning, otherwise known as site restoration, will be necessary for each of its nuclear plants. The testimony of Edison witnesses Thomas S. LaGuardia and Jay K. Thayer, two witnesses with real decommissioning experience, leaves no doubt that non-radiological decommissioning is necessary to remove the dangerous building shells remaining after radiological decommissioning.

While the NRC can be expected to ensure that radiological decommissioning will occur, there is no regulatory body with the responsibility to ensure that non-radiological decommissioning occurs. Despite its own compelling case that non-radiological decommissioning is necessary, Edison has not committed to ensuring that funding is available for non-radiological decommissioning of each of its plants. Edison witness Robert F. Berdelle, the company's vice president and comptroller, testified that the trust funds would be used to fund non-radiological decommissioning to the extent funds are available. Edison Exhibit 8 at 16. However, he did not commit to non-radiological decommissioning of plants if the trusts do not have adequate funds available. Berdelle did commit to redistributing remaining excess funds from decommissioned plants to the trusts for plants yet to be decommissioned, but that commitment does not help if one of the first plants to be decommissioned does not have adequate funds.


If the Commission authorizes any decommissioning collection by Edison for Genco, it should condition such collection upon Edison agreeing to guarantee that adequate funds will be available for each of its nuclear plants.

III. CONCLUSION

For the foregoing reasons, if the transfer of Edison's nuclear plants to Genco is completed, Northern Illinois consumers cannot and should not be required to contribute any additional funds to decommission the nuclear plants. If the Commission authorizes any decommissioning collection by Edison for Genco, it should condition such collection upon Edison agreeing to guarantee that adequate funds will be available for each of its nuclear plants.

Respectfully submitted,

Environmental Law and Policy Center

By: 
Daniel W. Rosenblum

September 18, 2000

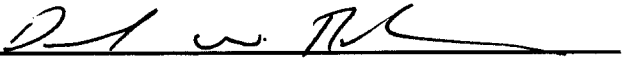
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NOTICE OF FILING

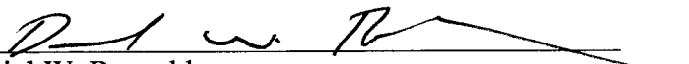
PLEASE TAKE NOTICE that on this date, September 18, 2000, I filed with the Chief Clerk of the Illinois Commerce Commission, 527 East Capitol Avenue, Springfield, Illinois 62794, the original and eleven copies of the enclosed *Initial Brief of the Environmental Law and Policy Center* in the above-captioned proceeding by overnight mail.



Daniel W. Rosenblum

CERTIFICATE OF SERVICE

I, DANIEL W. ROSENBLUM, certify that I served the above Notice of Filing together with a true and correct copy of the document referred to therein upon all active parties on the Service List by depositing a copy in a properly addressed, sealed envelope with the U.S. Post Office, Chicago, Illinois, with proper postage prepaid on September 18, 2000 and all parties on the service list were also served by e-mail on that same day.



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